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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160301164-6164-01]

RIN 0648-BF87

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Framework Adjustment 3 and 2016-2017 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes regulations to approve and implement measures in Framework Adjustment 3 and 2016-2017 Specifications (Framework 3) to the Northeast Skate Complex Fishery Management Plan (FMP). Framework 3 would implement skate fishery specifications and a new seasonal quota allocation for the skate wing fishery. The action is necessary to update the Skate FMP to be consistent with the most recent scientific information, and improve management of the skate fisheries. The proposed action is expected to help conserve skate stocks, while maintaining economic opportunities for the skate fisheries.

DATES: Comments must be received on or before [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the framework, including the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for the action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50

Water Street, Mill 2, Newburyport, MA 01950. The framework is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2016-0054, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0054, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Skate Framework 3.”

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter; little; thorny; barndoor; smooth; clearnose; and rosette. The Council's Scientific and Statistical Committee reviews the best available information on the status of skate populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

The regulations implementing the Skate FMP at 50 CFR part 648, subpart O, outline the management procedures and measures for the skate fisheries. Specifications including the annual catch limit (ACL), annual catch target (ACT), total allowable landings (TALs) for the skate wing and bait fisheries, and possession limits may be specified for up to 2 years. The current specifications were implemented as part of Framework Adjustment 2 to the Skate FMP (79 FR 51504, August 29, 2014). The Council is required to develop new specifications for the 2016 and 2017 fishing years. The existing specifications and possession limits remain in effect until they are replaced. In addition to setting specifications, the Council desired to modify the in-season management of the skate wing fishery, including a new seasonal allocation of the quota in a framework adjustment.

In September 2015, the Council's Scientific and Statistical Committee reviewed updated information on the status of the seven species in the skate complex, including new research on discard mortality rates, and recommended an ABC of 31,081 mt for 2016 and 2017 (a 12-percent reduction from 2015). The recommended catch reduction is based on trawl survey biomass

declines in little and clearnose skates, as well as adjustments to historical catch estimates derived from the new discard mortality rate data (lower than previously assumed). According to the most recent stock status information, no skates are experiencing overfishing, and only thorny skate is in an overfished condition. Thorny skate continues to be a prohibited species as part of its long-term stock rebuilding plan. More details are provided in the EA (see **ADDRESSES**).

The Council's Skate Oversight Committee and Advisory Panel (AP) met in October 2015 to develop specification recommendations for Council consideration, following the procedures in Amendment 3 to the Skate FMP (75 FR 34049, June 16, 2010). Following these procedures, the recommended ABC reduction, in addition to increases in the skate discard rate in recent years, resulted in a 23-percent decline in the total allowable landings (TAL) from 2015 levels. Due to the 23-percent reduction in the TAL, the Committee and AP discussed tradeoffs between reducing possession limits versus seasonally allocating the TAL in an effort to avoid in-season closures and maintain a steady supply of skate wings across the year.

Proposed Framework Adjustment Measure

The Council ultimately decided to recommend status quo possession limits (see *Proposed Specification Measures*), but to use a framework adjustment to allocate 57 percent of the skate wing TAL to a Season 1 quota (May 1–August 31). Under this action, the Regional Administrator would be given the authority to reduce the skate wing possession limit from 2,600 lb (1,179 kg) to an incidental catch level of 500 lb (227 kg) when 85 percent of the Season 1 quota is projected to be landed. If 85 percent of the Season 1 quota is projected to be landed between May 1 and August 17, the Regional Administrator would be required to reduce the possession limit. However, if 85 percent of the quota is projected to be landed between August 18 and August 31, the Regional Administrator would have discretion on whether or not to reduce

the possession limit. The directed fishery would re-open with a 4,100-lb (1,860-kg) possession limit on September 1 with the remainder of the annual skate wing TAL available in Season 2.

In Season 2, the Regional Administrator may reduce the possession limit to 500 lb (227 kg) when 85 percent of the annual skate wing TAL is projected to be landed, consistent with the existing authority provided in the regulations implemented in Framework Adjustment 1 to the Skate FMP (76 FR 28328, May 17, 2011). These in-season possession limit reductions are designed to mitigate the potential for prolonged closures for the directed skate fishery, while still allowing some incidental catches to be landed.

Proposed Specification Measures

The Council has recommended, and NMFS is proposing in this rule, the following specifications for the skate fisheries for the 2016-2017 fishing years:

1. Skate Complex ABC and ACL of 31,081 mt;
2. Skate Complex ACT of 23,311 mt;
3. A TAL of 8,372 mt for the skate wing fishery, with 4,772 mt (57 percent) allocated to Season 1 (May 1 – August 31), and the remainder of the TAL (at least 43 percent) allocated to Season 2 (September 1 – April 30);
4. Status quo skate wing possession limits, as defined in § 648.322(b): 2,600 lb (1,179 kg) wing weight per trip for Season 1 (May 1 through August 31), and 4,100 lb (1,860 kg) wing weight per trip for Season 2 (September 1 through April 30) for vessels fishing on a Northeast Multispecies, Monkfish, or Scallop day-at-sea. The Northeast Multispecies Category-B day-at-sea possession limit remains at 220 lb (100 kg) wing weight per trip, and the non-day-at-sea incidental possession limit remains at 500 lb (227 kg) wing weight per trip;

5. A TAL of 4,218 mt for the skate bait fishery, divided into three seasons according to the current regulations at § 648.322; and
6. Status quo skate bait possession limit, as defined in § 648.322(c): 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of Framework 3, the EA for Framework 3, and this preamble to the proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). The following is a summary of the IRFA.

Description of the Reasons Why Action by the Agency is Being Considered and Statement of Objectives of, and Legal Basis for, this Proposed Rule

A description of the action, why it is being considered, and the legal basis for this action are contained in the Background section of the preamble and in the **SUMMARY** of this proposed rule.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This proposed rule would impact fishing vessels, including commercial fishing entities. In 2014, there were 2,012 vessels that held an open access skate permit. However, only 431 of those permit holders were active participants in the commercial skate fishery (i.e., landed any amount of skates). If two or more vessels have identical owners, these vessels are considered to be part of the same firm. In 2014, there were 67 vessels within affiliate groups; therefore, the total number of active entities is 364. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the \$5.5M cutoff for shellfish firms (NAICS 114112) and the \$20.5M cutoff for finfish firms (NAICS 114111), 361 of the 364 entities were small businesses in 2014; only three entities (0.8%) qualified as large businesses. On average, for small entities, skate is responsible for a small fraction of total landings, and active participants derive a small share of gross receipts from the skate fishery.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This proposed rule includes management measure alternatives for 1) the skate complex ACL and associated ACT and TALs, 2) possession limits in the skate wing and bait fisheries, and 3) seasonal allocation alternatives in the skate wing fishery.

With respect to the latter two management measures, the proposed action includes the alternatives that are expected to minimize any potential economic impacts compared to the other alternatives. This action proposes to maintain the current skate bait and skate wing trip limits. It would also apportion a percentage of the wing TAL to each season and establish an in-season trigger for season one. Therefore, the remainder of this summary will focus on the first management measure alternatives (i.e., ACLs).

The proposed ACL alternative described in the preamble of this proposed rule represents a reduction in the allowable catch and landings as compared to the no action alternative. Therefore, as compared to the proposed action, the no action alternative would result in less short-term economic impacts. During 2014, total revenues from skate landings were valued at approximately \$8.9 million. Compared to the no action alternative, the proposed reduction in the skate TALs (23 percent) could reduce potential annual skate revenues. However, actual skate landings in recent years have been close to the proposed TAL, suggesting that it is unlikely that potential revenue losses would be directly commensurate with the TAL reduction. If skate landings in 2016 and 2017 are comparable to those observed in 2014 and 2015, then most skate vessels may experience little loss of skate revenue, and the fishery may actually come closer to fully harvesting the available amount of landings. According to the analysis in the EA (see **ADDRESSES**), based on 2014 data, most entities (95 percent) would experience total landings revenue losses of less than 10 percent. Approximately 12 affiliate groups would experience losses of 10-15 percent, and 7 affiliate groups would experience losses greater than 15 percent.

The no action alternative is not expected to result in any additional short-term reductions in landings revenue. Given the recent performance of the skate fisheries, the no action alternative could minimize economic impacts and still achieve the stated objectives of this

action. However, the no action alternative does not include all of the most recent information on skate stock status and discard mortality rates, and could result in a higher risk of overfishing the skate complex resulting in long-term economic impacts.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 26, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.322, revise paragraphs (a)(1) and (b)(2) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(a) * * *

(1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market,

or classified by Federal dealers as food as required under §648.7(a)(1)(i), shall count against the skate wing fishery TAL. The annual skate wing fishery TAL shall be allocated in two seasonal quota periods as follows:

(i) Season 1-May 1 through August 31, 57 percent of the annual skate wing fishery TAL shall be allocated;

(ii) Season 2-September 1 through April 30, the remainder of the annual skate wing fishery TAL not landed in Season 1 shall be allocated.

* * * * *

(b) * * *

(2) *In-season adjustment of skate wing possession limits.* The Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing possession limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight or any prorated combination of the allowable landing forms defined at paragraph (b)(4) of this section) for the remainder of the applicable quota season, under the following circumstances:

(i) When 85 percent of the Season 1 skate wing quota is projected to be landed between May 1 and August 17, the Regional Administrator shall reduce the skate wing possession limit to the incidental level described in paragraph (b)(2) of this section.

(ii) When 85 percent of the Season 1 skate wing quota is projected to be landed between August 18 and August 31, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(2) of this section.

(iii) In Season 2, when 85 percent of the annual skate wing fishery TAL is projected to be landed, the Regional Administrator shall reduce the skate wing possession limit to the

incidental level described in this paragraph, unless such a reduction would be expected to prevent attainment of the annual TAL.

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